

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 444 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

S N JANI

Appearance:

1. Special Civil Application No. 444 of 2001
MR ND GOHIL, AGP, for Petitioner No. 1-2
MR IS SUPEHIA for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 18/10/2004

ORAL JUDGEMENT

By way of the present petition, the State Government has challenged the decision of the Gujarat Civil Services Tribunal dated 12th June 2000, by which

the appeal filed by the respondent was allowed in part. By the impugned order, the Gujarat Civil Services Tribunal set aside the penalty of removal of the respondent and directed that the respondent be treated to have voluntarily retired from service with effect from 30th July, 1992.

2. The respondent who was working as the Supervisor in the State Government was served with a chargesheet dated 29th December 1990 alleging unauthorised absence for long durations on several occasions during his service tenure from 1989 to his actual removal in the year 1993. Besides several different periods of unauthorised absence, the respondent was alleged to have remained unauthorisedly absent for a period of 159 days during the period between October 1989 to March 1990. Thereafter, once again with effect from 9th March 1990, the respondent remained unauthorisedly absent and despite service of chargesheet did not report for duty and as per the say of the Disciplinary Authority had not resumed duty till he was ordered to be removed from service by the order dated 8.7.93. At the end of the departmental inquiry, since the Disciplinary Authority found the charges proved, the order of penalty of removal from service came to be passed.

3. Aggrieved by the said order of penalty dated 8th July 1993, the respondent appealed against the same before the Gujarat Civil Services Tribunal which as noted above, came to be allowed partly by the order dated 12th June 2000 and instead of removal from service, the respondent was directed to be treated to have voluntarily retired with effect from 30th July 1992.

4. Aggrieved by the said order of the Gujarat Civil Services Tribunal, the State Government preferred the present petition.

5. From the perusal of the order of the Tribunal and the order of removal passed by the Disciplinary Authority, it can be seen that there is hardly any dispute about the fact that the respondent had remained unauthorisedly absent for long duration. It is not seriously in dispute that with effect from 9.3.90, the respondent was continuously absent without sanctioned leave. On earlier occasions also, the respondent had remained absent without leave for extended durations. The Tribunal was pleased to come to the conclusion that the respondent had applied for leave and there was some reasons for his absence for certain period. The Tribunal also noted that the respondent tried to resume duty on

31.1.92 but was not permitted to serve by the petitioner. On the basis of these factual observations, the Tribunal found that the respondent should be allowed to retire voluntarily with effect from 30th July 1992 when he sent the letter for voluntary retirement. Learned counsel for the respondent also points out that some of the periods of absence were subsequently regularized by the competent authority and that would be an additional factor in favour of the respondent.

6. The Hon'ble Supreme Court in the case of Union of India v. Ram Pal, AIR 1996 SC 1500, held that even if the period of unauthorized absence is subsequently regularised by treating the same as extra-ordinary leave, the basis of dismissal order does not get knocked out. In view of this decision of the Hon'ble Supreme Court, the fact that part of the absence period of the respondent was regularised cannot form the sole basis for setting aside the order of penalty. The Tribunal, in my view, did not consider the question in its proper perspective and interfered with the order of penalty imposed by the employer which was on the basis of validly held departmental inquiry. It is by now well settled that choice of punishment to be imposed pursuant to a validly held inquiry is that of the employer and unless the penalty imposed is found to be disproportionate so as to shock the conscience of the court, the court or the Tribunal cannot interfere with the order of penalty (See AIR 1996 SC 646).

7. Even otherwise, the Tribunal erred in interfering with the order of penalty. There is hardly any dispute about the fact that the respondent who was holding the post of Supervisor had remained absent for long durations without sanctioned leave. Considering the long period of absence without any authorization, the State Government had imposed penalty of removal from service and the Tribunal could not have interfered with the same unless, in the facts of the case, the penalty was found to be disproportionate so as to shock the conscience of the Court.

8. One of the factors which weighed with the Tribunal was that the request of the petitioner for voluntary retirement submitted on 30th July 1992 was neither accepted nor rejected. It may be noted that well before July 30, 1992, departmental inquiry was initiated by issuing chargesheet dated 29th December 1990 and the respondent was facing charge of serious misconduct. In that view of the matter, continuation of departmental inquiry without acceptance of the request for voluntary

retirement could not have been found fault with.

9. In the result, the petition succeeds and the impugned order of the Gujarat Civil Services Tribunal dated 12th June 2000 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)